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Charleston Gazette

More questions than answers about water at town hall meeting

By Kate White

CHARLESTON, W.Va. -- Frustrated by the chemical spill, Linda Frame doesn't see much of a reason to stay in Charleston.

"My kids want to go to WVU," but if things don't change, "I'm going to encourage them to leave," she said.

Frame made the comment at a town hall meeting held in the gymnasium of St. Matthews Episcopal Church in South Hills on Monday night.

About 100 people gathered at the church to try to get answers about "what's next?" since a coal-processing chemical leaked out of a tank Jan. 9 at Freedom Industries and into the Elk River, contaminating the water supply for 300,000 West Virginians.

Residents were told not to use their water for days after the leak. But since the ban was lifted, many still don't feel comfortable drinking the water -- which many still say smells like licorice.

Nearly everyone raised his or her hand when asked who still wasn't drinking the water. Dozens of questions were asked during the two-hour meeting, but not many answers were provided.

West Virginia House of Delegates members J.B. McCuskey and Eric Nelson, both R-Kanawha, and state Sen. Chris Walters, R-Putnam, attended the meeting. McCuskey and Charleston City Councilman Courtney Persinger organized the discussion.

Dr. Rahul Gupta, health officer for the Kanawha-Charleston Health Department, and Paul Painter, laboratory director for ALS Global in South Charleston, also took questions from residents.

Painter was the only panelist who said he had been drinking water from the tap.

"I did bathe through the ban," he said after the meeting, adding, though, that his water didn't have the licorice smell.

Gupta said he's tried to drink the water, but said the smell makes it difficult.

Many residents had questions about a bill, now on the Senate floor, that would require registration, inspection and regulation of above-ground chemical storage tank farms, and require public water systems to develop emergency plans to respond to contamination of their water sources.

"Are [lawmakers] really doing something with teeth or is this a dog and pony show," one man asked.

Lawmakers admitted that the bill had "imperfect parts" and said they would ask that the process be slowed down to give time for the public's opinion.

"This should be a deliberate, slow study process. This doesn't need to be a knee-jerk reaction," Walters said. "I have a pregnant wife and a three-year-old daughter -- I'm not consuming the water. I'm not cooking with it. I'm worried about my unborn child. I can't get answers."

One woman questioned lawmakers about Chemical Safety Board recommendations made to state officials after prior incidents at the Bayer CropScience plant and the DuPont plant in Belle. In both those reports, the CSB recommended West Virginia establish a program to prevent hazardous chemical releases.

State officials did not heed either recommendation.

"I'd really like to see you all take that up," she told lawmakers. Her comment drew loud applause.

McCuskey, when pushed by a woman about a blog post he wrote about "unreasonable regulations," said he didn't mean "regulations that ensure people and businesses have clean water."

"So you're not talking about the EPA overreaching?" the woman asked.

"There are instances when they do," McCuskey answered, drawing loud questions demanding he give an example.

"I think it's significantly harder to operate coal mines," he said, quickly adding that's not what Monday's meeting was about.

"There's no war on coal, there's a war on us," a man shouted.

Nelson asked residents to stay positive.

"We don't want this one incident to shut us down," he said.

Holding back tears, one woman said she just wanted to know "is our water ever really going to be safe or not?"

Charleston Daily Mail

DEP: Freedom leaked as much as 10,000 gallons

by Dave Boucher
Daily Mail Capitol Bureau Chief

CHARLESTON, W.Va. -- Freedom Industries now believes at least 10,000 gallons of chemicals leaked Jan. 9 from a faulty storage tank.

The new estimate is the latest -- and largest -- estimate for the amount of the chemicals that played a role in preventing 300,000 West Virginians from having safe tap water.

"This new calculation does not change any of our protocols in dealing with this spill, nor does it affect the ongoing remediation efforts," state Department of Environmental Protection Secretary Randy Huffman said in a press release.

"Our actions have never been dependent on what Freedom has reported to us. From the start, we have acted aggressively to contain the spill and remediate the site."

The state still doesn't know how much of the mixture of crude MCHM and PPH in the tank seeped through an old concrete wall meant to contain such leaks.

Freedom told the DEP it had 110,375 gallons of the two chemicals combined on Jan. 8 in three different tanks. After the spill the company moved the rest of the chemical to a location it owns in Nitro, called Poca Blending LLC.

As of Jan. 21 Freedom "measured" 100,233 gallons in six tanks at the Poca Blending site.

"The difference between the value from the morning of Jan. 9 and the value from Jan. 21 is 10,142 gallons. We therefore estimate that approximately 10,000 gallons of MCHM/PPH blend was released the morning of Jan. 9," Freedom said in a response to a DEP order.

Freedom has recovered about 1,272 gallons of chemicals at the site using "absorbent booms and other control devices," according to the DEP press release. It wasn't immediately clear how that number might relate to the amount spilled and amount that made it into the nearby West Virginia American Water Co. treatment facility.

Estimates as to the amount that might have leaked from the container have seesawed since the spill.

Initially officials with the DEP guessed between 2,000 and 5,000 gallons of chemicals spilled out of the storage tank. That number jumped to as much as 7,500 gallons within days of the initial estimate.

On Jan. 21 DEP official Mike Dorsey told a legislative committee the agency believed 6,251 gallons leaked.

"The number goes up and down, up and down, up and down. We don't know," Dorsey said the following day.

"Yesterday it was less, today it's more. That's all I really know about that. And are either of those numbers real? I don't know."

Initial reports on the size of the tank holding the chemicals also varied.

Freedom President Gary Southern said the tank could hold 35,000 gallons. Initially state officials reported the tank could hold 40,000.

In order to hold the reported 110,375 gallons of crude MCHM/PPH, stripped, and if Southern's report is accurate, the other two tanks would need to be larger than the faulty tank.

The DEP news release Monday didn't include a size for either of the other two tanks.

There are 14 other tanks that at one point were used to store hundreds of thousands of gallons of other chemicals at the site.

It wasn't immediately clear how many gallons of other chemicals remained on site.

Freedom must remove all of those chemicals by March 15. It must start deconstructing the facility by that date as well, according to a different DEP order.

This is a developing story. Look to www.dailymailwv.com for more information as it develops.

New York Times

Editorial: The House Targets Superfund

Earlier this month, the House approved a package of bills that could undercut an environmental law that has helped clean some of the most polluted places in the nation. The measures would allow states to apply their own standards to the cleanup of hazardous waste sites — standards that in most cases are likely to be considerably weaker than those governing the federal Superfund program, the 1980 program that has identified thousands of toxic waste sites and cleaned up many of them.

The program has always required companies responsible for the pollution to clean it up; when responsibility could not be determined, a fund underwritten by special corporate taxes paid for the cleanup. But when Congress refused to renew those taxes in 1995, that part of the program became wholly dependent on annual appropriations, an increasingly dicey proposition. The Environmental Protection Agency would like to renew the corporate contributions, but the House legislation would restrict its ability to do so. Other provisions would make it harder to clean up Superfund sites by requiring the agency to follow state regulations even when they are weaker than federal rules, and the federal government would be restricted from adding new sites to the Superfund list without the consent of the states they are in.

The package is the latest House Republican proposal designed to undermine environmental protections. The House has tried to cut the E.P.A.'s budget substantially, attempted to strip the agency of its ability to regulate greenhouse gases and sought to prevent the government from enforcing energy efficiency standards for ceiling fans and other household appliances.

Thankfully, the Superfund measure, like the others, is expected to stall in the Senate. House Republicans know this. Their legislation is mainly intended to signal that they stand ready to do the bidding of polluters if the party manages to take control of the Senate.

Norfolk Virginian-Pilot

RICHMOND -- Virginia lawmakers and business leaders are taking aim at the Environmental Protection Agency and new coal-plant pollution regulations.

They'll outline their opposition Tuesday at a news conference in Richmond. They are expected to state their opposition to proposed regulations that would impose limits on carbon emissions from coal-fired plants. They'll outline their opposition Tuesday at a news conference in Richmond.

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The proposed regulations have already had an impact, with many power companies moving to cleaner natural gas to generate electricity.

The legislators are expected to release a letter to President Barack Obama, urging him to abandon the proposed regulations for what they call a more sensible approach. Organizers say the letter has the signature of 85 members of the General Assembly.

State Impact Pennsylvania

McGinty: Gas is part of 'secret sauce' to drive economic growth

By Marie Cusick

Democratic gubernatorial candidate Katie McGinty said today she views the Marcellus Shale as an important economic driver, while pressing for a severance tax on gas production.

“I don’t support a moratorium,” she said. “I think the responsible production and use of the Marcellus Shale gas is actually part of the secret sauce as to how we will create jobs and how we will compete and win.”

McGinty was addressing the Pennsylvania Press Club in Harrisburg. She’s a former Department of Environmental Protection secretary who is now part of a crowded, eight-candidate field of Democrats hoping to defeat Governor Corbett this fall.

Act 13 decision

McGinty also weighed in on the state Supreme Court's decision last month to strike down portions of Act 13— Pennsylvania's two-year-old oil and gas law.

"I absolutely agree that it was the right thing to do—to reinstate the ability of local communities to have reasonable zoning authority," she said of the court decision. "I also think we ought to have repealed the physician gag order. It does not comport with a democracy. It should never have been part of the law."

The so-called "doctor-gag rule" in Act 13 has some medical professionals concerned they could get in trouble for disclosing chemical trade secrets associated with gas drilling. Last month the state Supreme Court sent a doctor's legal challenge back to the lower Commonwealth Court.

Impact fee vs. severance tax

Gas companies currently pay a flat fee of \$45,000 for each Marcellus well they drill. Over the past two years the impact fee has brought in about \$406 million.

McGinty said as governor, she would work with the legislature to impose a "competitive severance tax" on natural gas production.

"I would get to work in attracting those businesses and industries that can and should be in Pennsylvania— using that gas as a feedstock— [such as] chemicals, life sciences, pharmaceuticals and grow our economy in a sustainable way."

Royalty disputes

If elected, McGinty also said she would take a close look at the allegations among some landowners that they are being cheated out of royalty payments.

"I'm very concerned about those stories," she said. "If you're going to be a major player in Pennsylvania, you've got to play by the rules. I would be on top of that situation to make sure that people are being treated fairly."

BNA Daily Environment Report

Obama Urged to Act Alone on Climate if

Congress Won't Pass Legislation

By Dean Scott

As President Barack Obama prepared to deliver his State of the Union address, advocates of greenhouse gas reductions urged the president to turn up the pressure on Congress to pass climate change legislation while demonstrating his willingness to act alone in the face of congressional inaction.

In last year's address, Obama called on Congress to move forward on a market-based approach to reduce carbon dioxide emissions but warned that if it was unwilling to act, he would use his authority to cut emissions and prepare local communities for more severe storms related to climate change.

During the past year, Obama fulfilled much of that pledge, establishing timetables for the Environmental Protection Agency to begin setting carbon dioxide limits for new and existing power plants, part of a broad Climate Action Plan he unveiled in June 2013. But environmental groups want the president, who made cap-and-trade legislation the cornerstone of his climate and clean energy efforts in his first term only to see it die in the Senate, to signal that climate action remains a top priority.

The president should “reaffirm his commitment to the aggressive timetable and agenda he laid out a year ago, especially with regard to regulating greenhouse gas emissions from existing power plants,” according to Ned Helme, president of the Center for Clean Air Policy.

EPA is initially slated to set carbon limits for new power plants, but those will trigger separate regulatory guidelines for existing plants—which Obama wants finalized by June 2015. It is the requirements for existing plants that will have a significant impact on emissions because there are virtually no new coal-fired plants being planned.

Progress on Vehicle Emissions

Dan Weiss, a senior fellow on energy and environment for the Center for American Progress, said he expects Obama to use his Jan. 28 address to Congress to point to his administration's progress in setting greenhouse gas limits for cars and light trucks, the boom in natural gas that has helped curtail U.S. emissions and improved energy efficiency.

“Then I expect he would talk briefly about implementing his climate action plan” Weiss told Bloomberg BNA, adding that Obama may remind Congress that he launched his executive branch actions only after Congress failed to heed his call for action in the 2013 State of the Union address.

While the EPA power plant rules are widely seen as the most significant efforts, the 2013 climate plan also included policies to shift U.S. financing away from overseas coal-fired power plants to

clean energy projects and improved coordination between local, state, and federal authorities to prepare and adapt to climate impacts ([123 DEN A-1, 6/26/13](#))

“I think there will be about the same level” of focus on climate change in this year's address as in last year's, Weiss said, including calls on Congress to renew tax breaks and other incentives for solar, wind and other renewable energy technology. “If he gets into any detail at all, I'd expect him to say we are developing a plan to reduce carbon pollution for power plants, that it will be flexible, and that states ultimately will devise” the plans to implement the cuts for existing plants, Weiss said.

Under Obama's timetable, states would submit their plans for existing plants no later than June 30, 2016.

Linking Clean Energy, Job Creation

The Center for American Progress, in a Jan. 24 [analysis](#), called on the president to add five more items to build on his Climate Action Plan, including an ambitious U.S. pledge to cut its greenhouse gas emissions as it negotiates a global climate accord to be signed in Paris in December 2015.

The analysis, “5 More Items for President Obama's Climate Change To-Do List,” also urges Obama to push for extending wind, solar and other renewable energy tax incentives through 2020; pursue protections for the Arctic Ocean from oil production; oppose efforts to export U.S. oil; and establish a “carbon pollution reduction plan” to ensure that oil and gas production from U.S. public lands does not outstrip the ability of public forests and other land to store carbon.

White House officials traditionally provide few details in advance of the president's annual address, and this year is no exception. But with Congress still deadlocked over extending emergency unemployment benefits and Obama's recent focus on rising economic inequality and the need to strengthen the middle class, the president is likely to link any mention of clean energy and climate action to the jobs those policies could produce.

“As always, he'll be working on it right up until game time, but three words sum up the President's message on Tuesday night: opportunity, action, and optimism,” White House Senior Adviser Dan Pfeiffer wrote in a Jan. 25 email to supporters, adding that the speech will include “real, concrete, practical proposals to grow the economy [and] strengthen the middle class.”

But just as Obama warned in last year's speech, the president will warn that he “will not wait for Congress” on economic issues, including job creation, Pfeiffer wrote. Obama will also use the bully pulpit provided by the White House, he wrote, adding that the president “has a pen and he has a phone, and he will use them to take executive action” to enlist those outside of Congress, including business owners, mayors and state legislators, to work on job creation and to improve the economy.

Some environmental advocates say that while the president has shown more recently that he will use that pulpit to talk about climate change, he should make greater use of it beginning with his

State of the Union speech.

While there is little hope of congressional action on climate change in the near term, “President Obama still has the bully pulpit,” Angela Anderson, director of the Union of Concerned Scientists' climate and energy program, wrote in a Jan. 24 blog post. “He has only just begun using it in earnest to mobilize the nation on climate change, but it is beginning to work.”

There are only a few moments a year, including his address to Congress, “when the president can traditionally command our attention when it comes to important issues,” she wrote. “Taking climate seriously—and talking about it publicly—can go a long way toward helping the nation understand the facts and the risks that come with a warming world.”

Greenwire

COAL: Murray threatens EPA with lawsuit for failing to assess rules' economic impacts

By Manuel Quiñones, E&E reporter
Published: Monday, January 27, 2014

Ohio-based Murray Energy Corp. is threatening to sue U.S. EPA over the economic impacts of Clean Air Act enforcement on the coal industry.

A five-page [notice of intent](#) to sue sent to EPA on behalf of Murray by the law firm Squire Sanders LLP says the agency has ignored Clean Air Act Section 321, which calls for an economic analysis of regulations.

"The Clean Air Act is crystal clear in requiring the EPA to evaluate the negative impact that their regulations will have on jobs, but they have repeatedly been derelict in their duty," said Gary Broadbent, Murray Energy general counsel.

Broadbent added, "We must defend these jobs, families and America, and force the EPA and President Obama to comply with the law."

Republican lawmakers have also pressed EPA on Section 321, including during confirmation hearings last year for EPA Administrator Gina McCarthy.

"In keeping with congressional intent, EPA has not interpreted this provision to require EPA to conduct employment investigations in taking regulatory actions," McCarthy wrote in response to questions from Sen. David Vitter (R-La.), the ranking member on the Senate Environment and Public Works Committee.

"Section 321 was instead intended to protect employees in individual companies by providing a mechanism for EPA to investigate allegations that specific requirements, including enforcement actions, as applied to those individual companies, would result in layoffs," she added.

McCarthy said the agency conducts regulatory impact analyses for major rules, including potential employment impacts. And, in general, EPA has argued that its rules are a net benefit to society.

The U.S. Chamber of Commerce has complained about the way EPA does its reviews, saying it downplays economic impacts (*Greenwire*, Feb. 28, 2013). Agency critics have often called for a "whole economy analysis."

Oklahoma Sen. James Inhofe (R) has also pushed a proposal in recent weeks to prevent EPA greenhouse gas regulation from moving forward absent a full EPA economic analysis of Clean Air Act rules.

And when it comes to Section 321, Murray sees EPA's interpretation as being "at odds with the plain language" of the law, which states that the administrator "shall conduct continuing evaluations."

Murray's notice of intent also argues that the agency's view contradicts the legislative history of the Clean Air Act, "which makes clear that [Section 321] imposes an affirmative duty on EPA to evaluate its administration and enforcement of the Clean Air Act for potential loss or shifts of employment."

Murray Energy CEO Robert Murray has for years been an ardent critic of the Obama administration's oversight of power plants and mining operations, calling White House actions a "war on coal." Murray vigorously campaigned against Obama's re-election.

Now the company and its chief are looking to the courts for relief. "This is just the first of several actions that we have undertaken to protect the livelihoods of coal miners and their families and to preserve low-cost electricity in our country," Broadbent said.

Last year Murray Energy grew in stature when it bought out several Consol Energy Inc. coal mines and related operations. The company now boasts more than 7,000 workers and 13 active coal mines.

Other cases

Murray Energy and its CEO have clashed not only with the Obama administration, but also with the media. A federal case against *The Huffington Post* and blogger Mike Stark is set for jury trial this summer in U.S. District Court for the Southern District of Ohio.

Writing in September about Murray donations to former Virginia GOP gubernatorial candidate Ken Cuccinelli, Stark wrote that one may expect Cuccinelli to "be cautious before accepting fat

envelopes of cash from extreme and unsavory donors." He also suggested that Murray was an "extremist billionaire."

Murray is accusing Stark and a host of other *Huffington Post* defendants, including executive Arianna Huffington, of defamation and false light invasion of privacy.

"These false and defamatory statements have severely harmed the reputation of the Murray Plaintiffs, caused great mental anguish and emotional distress for Plaintiff Robert E. Murray and his family members, and have cast the Murray Plaintiffs in a false light before the public," Murray lawyers wrote in documents last year.

Huffington Post attorneys responded, "Plaintiff Robert Murray is a sophisticated man. He may well be aware that his Complaint has no merit under established legal precedents."

For their part, Stark's attorneys wrote in court documents that their client's article "contains no false statements of fact, nor is it misleading, nor does it place Murray in a false light."

Murray is also pursuing a case in state court against the *Chagrin Valley Times*. And in 2012, Murray agreed to drop a suit against *The Charleston Gazette* in West Virginia and reporter Ken Ward Jr. in exchange for an op-ed (*Greenwire*, Oct. 31, 2012).

Beyond the media, Murray is also pursuing a case against former Chesapeake Energy Corp. CEO Aubrey McClendon's new venture. Murray, parent company to American Energy Corp., is objecting to the name of McClendon's new American Energy Partners LP, which is based in Oklahoma but hopes to drill for natural gas in Ohio.

U.S. District Judge Tim Leonard for the Western District of Oklahoma dismissed this month a related case from McClendon's company against Murray's on jurisdictional grounds. But a lawsuit by Murray's company against McClendon's remains active in U.S. District Court for the Southern District of Ohio.

Philadelphia Inquirer

Blog: We should be outraged by the Elk River chemical spill

Michael Yudell, Associate Professor, Drexel University School of Public Health

Posted: Tuesday, January 28, 2014, 6:30 AM

Filed Under: [Environment](#) | [Michael Yudell](#)

Last Monday, Gov. Earl Ray Tomblin told West Virginia residents that it was up to them

whether or not to drink water contaminated by the Jan. 9 spill of the chemical 4-methylcyclohexane methanol (MCHM) into the Elk River. The spill occurred just upstream from a water intake for Charleston's water supply, temporarily cutting off fresh water access to the area's 300,000 residents, sickening at least 400, and putting many others at unknown risk from drinking the water.

The day after the Democratic governor's speech, it was revealed that an additional chemical, Polyphosphorhydrazone (PPH), had also leaked into Elk River waters. Both chemicals are used in the processing of coal.

"It's your decision," Gov. Tomblin told West Virginians, even as controversy arose over the safety of the water, especially for pregnant women and young children. "If you do not feel comfortable drinking or cooking with this water, then use bottled water."

That a sitting governor could tell the people he serves in the wake of this environmental health disaster that it is *their decision* whether or not to drink water from a public water supply is shameful. This is protecting his constituents? We should be outraged.

Outraged that state and local government officials thought it was a good idea to allow the storage of toxic chemicals anywhere near a water supply.

Outraged that regulation is so lax in West Virginia that the tanks storing MCHM and PPH had only been minimally inspected in recent decades and that, despite being required to, the company that owned the tanks, Freedom Industries, had neither submitted nor been asked by state officials to submit a storm-water pollution prevention plan or a groundwater-pollution prevention plan.

Outraged that we know so little about the health and environmental hazards of MCHM. Chemicals like MCHM *should* be regulated by the Toxic Control Substances Act of 1976. But because MCHM was among the 62,000 chemicals already in use when Congress passed that law, federal agencies have no mandate to determine their actual safety. Chemicals in use before the law's passage were presumed safe.

Outraged at the ineptitude of the response to the spill. In the wake of the contamination, Freedom Industries has filed bankruptcy protection, a move seen to protect itself from the lawsuits already filed against it. West Virginia American Water, the water utility that supplies water to the region, was, according to the Charleston Gazette, caught filling up water tankers for residents in areas with contaminated water with the same MCHM laced water from the Elk River that was declared unsafe. Incidentally, just a day before the disaster, Gov. Tomblin declared in his State of the State address that he would "never back down from the EPA because of its misguided policies on coal." And though the governor has proposed new legislation to increase oversight of companies like Freedom Industries, he also has distanced himself from the spill, seeming to put the blame squarely on West Virginia American Water. "I'd like to say they should have known," Tomblin said when asked if the company should have done more to protect the water supply. "But I'm not someone who runs West Virginia American Water."

And don't forget outrage at the poor federal response to the disaster. The Society for

Environmental Journalists and the Society for Professional Journalists expressed their own outrage in an open letter to the heads of the U.S. Environmental Protection Agency and the Centers for Disease Control and Prevention, writing that “since the Charleston story broke January 9, many news reporters have had real difficulty getting access to—and meaningful responses from—federal officials.” For example, it took the EPA a week to comment on the safety of the water, and CDC has refused requests by the Charleston Gazette for the basis of its claim that 1 ppm of MCHM was safe.

The spill of MCHM and PPH into the Elk River is a reminder of how important environmental regulations—and the enforcement of those regulations—are to the public’s health. If we can muster some level of collective outrage at this situation, perhaps we can put politicians and industry alike on notice that we will not allow disasters like this to happen again. Here in Pennsylvania, activists and politicians are fighting to do just that in the battle to improve regulation and oversight of the fracking industry. Last month's Pennsylvania State Supreme Court ruling striking down parts of Act 13, the state’s natural gas drilling law, is a step in the right direction. Let’s hope that continued action on behalf of the public’s health prevents the after-the-disaster outrage that happens a little too late and all too often.